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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/350,474	07/09/1999	WILLIS L. WINSTROM	POC-99-1-1	8187

23531 7590 12/04/2001

SUITER & ASSOCIATES, PC
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OMAHA, NE 68154-5299

EXAMINER

LEVY, NEIL S

ART UNIT	PAPER NUMBER
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1616

/6

DATE MAILED: 12/04/2001

Please find below and/or attached an Office communication concerning this application or proceeding.



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16

DATE MAILED:

12/4/01

This is a communication from the examiner in charge of your application.
COMMISSIONER OF PATENTS AND TRADEMARKS

☒ This application has been examined ☒ Responsive to communication filed on 10/01/01 ☒ This action is made final.

A shortened statutory period for response to this action is set to expire 3 month(s), _____ days from the date of this letter.
Failure to respond within the period for response will cause the application to become abandoned. 35 U.S.C. 133

Part I THE FOLLOWING ATTACHMENT(S) ARE PART OF THIS ACTION:

- | | |
|---|---|
| 1. <input type="checkbox"/> Notice of References Cited by Examiner, PTO-892. | 2. <input type="checkbox"/> Notice of Draftsman's Patent Drawing Review, PTO-948. |
| 3. <input type="checkbox"/> Notice of Art Cited by Applicant, PTO-1449. | 4. <input type="checkbox"/> Notice of Informal Patent Application, PTO-152. |
| 5. <input type="checkbox"/> Information on How to Effect Drawing Changes, PTO-1474. | 6. <input type="checkbox"/> _____ |

Part II SUMMARY OF ACTION

1. ☒ Claims 1-10, 57-100 are pending in the application.
Of the above, claims 76, 86, 688-78 are withdrawn from consideration.
2. ☒ Claims 11-56 have been cancelled.
3. ☐ Claims _____ are allowed.
4. ☒ Claims 1-10, 57-64, 66-75, 77-85, 87, 99+100 are rejected.
5. ☐ Claims _____ are objected to.
6. ☐ Claims _____ are subject to restriction or election requirement.
7. ☐ This application has been filed with informal drawings under 37 C.F.R. 1.85 which are acceptable for examination purposes.
8. ☐ Formal drawings are required in response to this Office action.
9. ☐ The corrected or substitute drawings have been received on _____. Under 37 C.F.R. 1.84 these drawings are ☐ acceptable; ☐ not acceptable (see explanation or Notice of Draftsman's Patent Drawing Review, PTO-948).
10. ☐ The proposed additional or substitute sheet(s) of drawings, filed on _____, has (have) been ☐ approved by the examiner; ☐ disapproved by the examiner (see explanation).
11. ☐ The proposed drawing correction, filed _____, has been ☐ approved; ☐ disapproved (see explanation).
12. ☐ Acknowledgement is made of the claim for priority under 35 U.S.C. 119. The certified copy has ☐ been received ☐ not been received ☐ been filed in parent application, serial no. _____; filed on _____.
13. ☐ Since this application appears to be in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11; 453 O.G. 213.
14. ☐ Other

EXAMINER'S ACTION

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Receipt is acknowledged of Amendment and Change of address (10/01/01).

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Claims 76, 86 and 88-98 stand withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in Paper No. 4.

This application contains claims 76, 86 and 88-89 drawn to an invention nonelected with traverse in Paper No. 4. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claims 1-10, 61, 66-75, 77-85, 87, 99 and 100 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

The rejections of record are maintained. Examiner does not find definitions in the specification which would support applicants lexicography. Claims 4, 5-etc.-- in addition are still semi-Markush- Markush format, but using "or", not and, provides for clear indefinite group identification. Indefinite and relative terms may well be known in the art--they however, permit of wide interpretation--so wide that they permit of anticipation by the prior art, substantially, for instance can refer to function or quantity; it can mean, depending upon the use, 10%, 20%, 50%, or more.

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Claims 1-5, 7-9, 57, 60, 61, 63, 64, 66, 70, 71, 73, 77, 78, 80-82, 87, 99 and 100 are rejected under 35 U.S.C. 102(e) as being anticipated by Kemp et al 5908634.

The rejection of record is maintained. Anticipation is stated by applicant to require each and every element--applicant argues no prima facie showing of organisms with fermentation. However, as examiner reads the instant claims, the offending elements are those constituting production of the claimed product, applicant is not claiming production, and has not shown any criticality of the processing elements as providing a different product from that of the prior art. Consequently, these elements are given no patentable weight. The rejection is not one of prima facie obviousness; it is one of anticipation of the applications invention as claimed by the whole of the prior art disclosure.

Claims 1-9, 57-64, 66-74, 77-84, 87, 99 and 100 are rejected under 35 U.S.C. 102(b) as being anticipated by Klothen 4447421.

The rejection of record is maintained. The products of Klothen are not required to be compacted: see col. 5. Examiner has no support for seeing Klothen's particles as those of the instant claims, is so far as "substantially dry an uniform size requirements" are concerned--that is examiners understanding of the instant claim language as being the same as Klothen's, since the instant language provides no quantification. This Office does not deem the words "substantially" to be required of the language of a reference to meet and anticipate the instant use of "substantially" in the instant claim.

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Applicant's arguments filed 9/10/01 have been fully considered but they are not persuasive. Applicant's arguments, to the extent maintained have been addressed above.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Neil Levy whose telephone number is (703) 308-2412. The examiner can normally be reached on Tuesday to Friday from 7:00 am to 5:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jose Dees, can be reached on (703) 308-4628. The fax phone number for the organization where this application or proceeding is assigned is (703) 305-3592.

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Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1235.

Levy:mv

November 29, 2001



NEIL S. LEVY
PRIMARY EXAMINER